

personal relationship conducted on a permanent basis under one roof. The support given to the applicant by Mrs B in his ill health, the joint purchase of the house and expressions of liking and concern were evidence of a strong bond between them which taken together suggest a marriage-like relationship.

Reform required

The AAT was not happy with such a finding.

The Tribunal was critical of the statutory definition of a de facto relationship which it described as 'discriminatory and contrary to desirable public policy.' It is discriminatory in that it disadvantages affectionate and caring heterosexual couples in comparison to homosexual couples, and it is contrary to desirable public policy because it discourages independent living, pooling of resources and the sharing of scarce urban accommodation on the part of people over 60.

The AAT concluded:

'The aggregation of a heterosexual couple's assets and income for the purpose of calculating rates of pension or benefit is one in urgent

need of official scrutiny. It produces unfair and indeed, in this case, inhumane results. But the duty of the Tribunal is to apply the law, not to reform it. Thus, I have no alternative but to affirm the decision under review.

(Reasons, p.10)

Formal decision

The Tribunal affirmed the decision under review.

TAYLOR and SECRETARY TO DSS (NO. N86/7)

Decided: 3 June 1987 by R.A. Hayes

The applicant applied to the AAT for review of a DSS decision to recover an overpayment of \$13,586.70 in supporting parent's benefit. The Department alleged that the applicant was no longer living apart from her de facto husband while in receipt of the benefit.

The Tribunal was satisfied that the applicant and her husband had an 'on/off' relationship over the relevant period. This had led to the applicant making a number of false statements as to her domestic situation to the

Department over the relevant period. It was on these false statements that the DSS case rested.

But the fact that the applicant misled the DSS as to her relationship with her husband did not compel the inference that they had been living together during the relevant period.

'...the real reason for her course of deception was that she thought that her husband's constant return visits, when she had nowhere else to go, were enough to disentitle her to the benefit. In other words, finding her a liar does not inexorably lead to an inference adverse to entitlement.'

(Reasons, p.15)

On the evidence, the AAT found that the visits by the applicant's husband to the applicant, which extended to weeks at a time, did not of themselves mean that they were living together. While it was not clear as to what was the motivation of the husband during these visits, it was open on the evidence to find that he stayed because he had no other place to go.

Formal decision

The AAT set aside the decision under review.

Overpayment: hardship

DENNISTON and SECRETARY TO DSS

(No. V86/269)

Decided: 31 August 1987 by I.R. Thompson

The applicant applied to the AAT for review of a DSS decision to recover an overpayment of \$6,271.30 in widow's pension. The Department had also decided to deduct the overpayment from the applicant's pension. A balance of \$3,495.30 remained at the time of the hearing.

Hardship

The Tribunal found that the applicant had been living with a man as his wife while in receipt of widow's pension. As a consequence the applicant had been not been entitled to the pension and was thus overpaid.

The Tribunal thus turned to the question of recovery. Under s.140 of the *Social Security Act* a decision first had to be made about raising the overpayment. The applicant had cash assets of over \$1,000. She owned her home and her weekly expenses came to about \$68 excluding food. But the Tribunal thought that within that stated expenditure the allocation of \$20 per week for petrol was unreasonable, even allowing for the applicant's location - a mile outside a country town. The Tribunal concluded that there was a capacity to deduct \$7.50 per week from the applicant's pension.

The AAT also commented on the desirability of not continuing the process of recovery for too long, particularly in the case of elderly

pensioners. In the present case the applicant was 62 years old. Having regard to these circumstances, the AAT decided that the amount of \$15 per fortnight should be deducted but that that deduction should stop in five years time and that the right to recover the balance should be waived under s.146.

Formal decision

The AAT varied the decision under review and directed that \$15 per fortnight be deducted from the applicant's pension, that the deductions be made for five years commencing on 31 August, 1987 and that the remainder be waived under s.186 [previously s.146].

Overpayment: bankruptcy

TAYLOR and SECRETARY TO DSS (No. N87/1037)

Decided: 25 September 1987 by C.J. Bannon.

The AAT affirmed a DSS decision to recover an overpayment of \$11 548 by deductions of \$10 a fortnight from the applicant's widow's pension.

During the hearing of this matter, it was argued that the DSS recovery was barred because Taylor had been declared bankrupt in March 1986. The AAT commented as follows:

'That point was considered in a decision given by Jenkinson J . . . in Stewart (1985) 29 SSR 359. I have not examined that law closely but it seems to me, with respect, that the learned Judge was correct in the view he took. Whether the recovery of the debt is barred by the Bankruptcy Act 1966, or not, I

fully accord with the learned Judge's view that overpayments may still be deducted from a continuing pension pursuant to the provisions of s.140 of the *Social Security Act* 1947 as amended.'

(Reasons, p.3)